

8 Official Opinions of the Compliance Board 111 (2012)

- ◆ **Notice Requirements – Content**
 - ◇ Omission of date, time, place in website posting
- ◆ **Notice Requirements – Method – Generally**
 - ◇ Posting on office door inside office building insufficient when public was last notified of the method 8 years ago
- ◆ **Open Session Requirement – Practices permitted**
 - ◇ For conference call meeting, enabling the public to listen by speaker phone
- ◆ **Open Session Requirement – Practices permitted**
 - ◇ Holding a meeting at a restaurant, without charge
- ◆ **Minutes – Generally**
 - ◇ Preparation and adoption within reasonable time required

*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

September 26, 2012

Re: Northeast Maryland Waste Disposal Authority/Michele J. Fluss

We have consolidated and considered the complaints of Michele J. Fluss (“Complainant”) that the Northeast Maryland Waste Disposal Authority (the “Authority”) violated the Open Meetings Act (the “Act”) in various regards. The Authority, a regional public body comprised of officials from seven counties and Baltimore City, responds to some of Complainant’s allegations by stating that it has changed certain procedures to address her concerns, and, to the other allegations, that they do not state violations of the Act.

We agree with the Authority’s acknowledgment that a public body which expects to close a meeting should include a notice to that effect in the public notice of the meeting, and the Authority states that it will do so. *See* State Government Article (“SG”) § 10-506(b)(3). We agree also with the Authority’s acknowledgment that it has not always adopted its minutes as promptly as it should and commend its undertaking to prepare and adopt them more quickly. We disagree, however, with the Authority’s suggestion that a delay of three months would be generally acceptable. As explained in 7 *OMCB Opinions* 237, 240-41 (2011), we deem “routine delays of

several months [to be] unreasonable,” and, as explained in 6 *OMBC Opinions* 85, 88 (2009), public bodies that meet too rarely to approve their minutes promptly at a meeting should approve them by some other means. We turn to Complainant’s other allegations.

Notice. Complainant complains that the Authority violated the requirement of the Act that a public body give “reasonable advance notice” of its meetings. *See* SG § 10-506(a). Although the Authority’s submissions show some effort to comply with the notice requirements, we find that the methods used by Authority do not provide adequate notice to the public.

Under § 10-506(b)(2), the notice of a meeting must include the “date, time, and place of the session.” Under § 10-506(c), notice may be given by State public bodies by notice in the Maryland Register, or otherwise, by any of three other ways: (1) by delivery of the notice to representatives of the news media who regularly report on the public body’s activities; (2) after giving public notice of the method, by posting the notice either on a website “ordinarily used by the public body to provide information to the public” or “at a convenient public location at or near the place of the session” ; (3) “by any other reasonable method.” The Authority states that it uses two methods: first, it posts, at the entrance to its offices in an office building in Baltimore, a notice specifying the date, time, and location of its meetings, a number of which were held in other locations. In 1988 and 2003, the Authority gave notice in the Maryland Register that it would use that method. Second, the Authority states, its “website notifies the public that the Board meets regularly” and “provides a telephone number and e-mail address for members of the public who want to be informed of the dates of Board meetings.” Under the link for the “list of members and map of jurisdictions,” the website mentions that “the board meets regularly to approve actions, establish policies and to set goals for the Authority.” The Authority’s contact information appears separately.

The Authority’s statement on its website that it meets regularly does not specify the date, time, and place of any particular meeting and so does not constitute proper “notice” under § 10-506.

As to the Authority’s posted notice, the circumstances of this public body differ from those of a local entity that posts its notices outside a town hall or other public space to which the entity’s constituents have regular access. *See, e.g., 7 OMCB Opinions* 237, 238 (2011) (discussing a town’s long-established use of a bulletin board). Plainly, it is not “convenient” for many of the constituents of this regional body to continuously check a door in a downtown office building for meeting notices; the Authority’s constituent jurisdictions range from Harford County to the east and north to Frederick County to the west and Anne Arundel County to the south. Moreover, even for local entities, we have expressed concern about the posting of notice in places closed to the public after business hours. In 1 *OMCB Opinions* 186, 188 (1996), we addressed a city’s “decision to use an interior bulletin board” for posting meeting notices. We stated:

[We] would be concerned were this the only method of notice. If City Hall is open only during ordinary business hours, posting in the interior of the building means that members of the public who work during the hours when City Hall is open would not have a reasonable opportunity to learn of meetings.

Id. And, we are concerned by the fact that the Authority last gave notice of this method in 2003 and does not mention it on its website. In sum, the Authority's mention of its meetings on its website lacked the content required by the Act, and the notices posted on the door, while a nod to the Act, addressed neither the requirement that the location be "convenient" nor the intent of the Act that public bodies use effective methods of notice. We encourage the Authority to post its meeting notices on its website and use the Maryland Register or "any other reasonable method" of giving notice. *See* § 10-506(c).

Meeting locations. Complainant challenges the Authority's meetings by conference call and at restaurants. We do not find a violation in either regard.

First, Complainant alleges that the Authority violates the Act when it meets by conference call and provides access to the meeting only through a speakerphone at the Authority's office in Baltimore. Stating that Baltimore is distant from her home in Carroll County, Complainant asserts that the public should be provided with a call-in number or speakerphones in the various counties so that people may have more convenient access to the meeting. Although a meeting should be reasonably accessible to the public body's constituents, *see* SG § 10-501(c), that principle is not so easily applied when the public body serves a large geographical area, does not have branch offices, and cannot meet at a location convenient to all of its constituents. Furthermore, the provision of the call-in numbers to a person normally enables that person to participate in the call, a privilege not conferred by the Act. We conclude that a regional public body does not violate the Act when it provides access to a conference-call meeting via a speakerphone located at the public body's office.

Next, Complainant alleges that the Authority violates the Act by holding dinner meetings at restaurants where alcohol is available to the members. The submissions, with variations not material to our opinion, show that Complainant asked the Authority staff whether it would pay for dinner at one such meeting. Staff told Complainant that the Authority could hold its meeting before the members dined and that she did not need to purchase dinner to attend. Nonetheless, Complainant did not attend the meeting, and she now alleges that the meeting was not effectively open to the public because she "would not feel comfortable attending a public meeting where alcoholic drinks are being served." The Authority expects to hold future meetings at its office in Baltimore.

SG § 10-501(c) provides that meetings “shall be held in places reasonably accessible to individuals who would like to attend these meetings.” A meeting that would not have met that requirement, had it occurred, would have been a public body’s site visit to a juvenile facility that the State had closed to the public. *See 78 Opinions of the Attorney General* 240, 247 (1993). Another meeting that did not meet that requirement was a meeting to which the public body charged admission. *See 8 OMCB Opinions* 19 (2012). On the other hand, the Act does not prohibit a public body from having a meal during a meeting; does not prohibit a public body from meeting in a private meeting space to which there is access to members of the public at no cost to them; and does not regulate the members’ choices of food and drink.

In conclusion, the methods of notice used by the Authority do not comply with the Act; when the Authority must meet by conference call, the Authority may provide access to that meeting by speakerphone at its office; and the Authority did not violate the Act by holding dinner meetings at restaurants in the counties it serves.

Open Meetings Compliance Board

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